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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

BARRY LAMON, Plaintiff, **v.** **C.K. PLILER, et al.,** Defendants.	2:03-CV-0423 AK **DEFENDANTS' TRIAL BRIEF** Date: March 29, 2010 Time: 10:00 a.m. Dept.: 3 Judge: Honorable Alex Kozinski

Under Local Rule 285 and the Court's pretrial order filed on May 5, 2008, Defendants file this trial brief.

STATEMENT OF THE CASE

I. PLAINTIFF'S ALLEGATIONS

Plaintiff claims that on August 14, 2002, Defendants were aware that he was at a high risk for suicide attempts. That day at approximately 12:15 p.m., defendants Scicluna and Lytle were instructed to search plaintiff's cell (FB2-111) and move all of plaintiff's personal property to a new cell (FB2-118). Plaintiff alleges that the cell move was for the purpose of doing a favor to another inmate. When he refused to comply with the order, Plaintiff alleges that "Defendants

Lytle, Murphy, and Scicluna had [him] physically overwhelmed, shackled hand and foot, and physically dragged from the housing area and deposited in a security holding cage." He alleges that he remained there for several hours with the handcuffs and shackles applied so tightly that they caused cuts and bruising. He alleges that while in the holding cell, he became suicidal and yelled at the top of his lungs for a help and a mental health professional.

He alleges that later, Defendant Loredo arrived and was told by the other Defendants that Plaintiff was"trying to get mental health involved all morning." He alleges that she too refused to provide him with mental health treatment. He alleges that he told her that he was suicidal. He alleges that she responded: "That's just gonna get you dead. It still won't get your cell back." Shortly thereafter, Plaintiff set fire to his cell.

Plaintiff's only claim against these Defendants is that they failed to provide him with mental health services in violation of the Eighth Amendment. (See Pretrial Order at 4, "the only remaining claim is the Eighth Amendment medical care claim based on access to mental health services.")

Plaintiff alleges that as a result of their failure to provide him with mental health treatment, he suffered: (1) physical injuries to his wrists and ankles caused by the shackles; (2) carbon monoxide poisoning resulting in headaches; (3) minor burns; (4) loss of personal property caused by the cell change; (5) mental decompensation and stress; and (6) loss of constitutional rights.

II. FACTS AS WILL BE ESTABLISHED BY DEFENDANTS

On August 14, 2002, Plaintiff was called in from the yard so that he could be moved from Cell 111 to Cell 118. All cell moves are for institutional purposes. During the cell move, Defendant Scicluna found two quarts of inmate manufactured alcohol in Plaintiff's cell. Angry at the cell move, Plaintiff went inside cell 111 and refused to leave. Scicluna gave him a direct order to leave the cell and go to his new cell, and he again refused. This necessitated that he be hancuffed and placed in a holding cell. He remained in the holding cell for a period of time. While there, he did not ask to see a mental health professional and at no point did he say he was suicidal.

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Thereafer, he was taken to his new cell, FB2-118. Approximately three hours later, at about 5:20 p.m. that same day, Plaintiff set cell FB2-118, his new cell, on fire. Flames and a large amount of smoke were visible from outside the cell. Plaintiff was taken out of his cell, placed in handcuffs, and taken to the prison infirmary. He was later taken to UC Davis Medical Center. All of the contents of Plaintiff's cell were declared a fire hazard and discarded.

Plaintiff was not suicidal, and never informed Defendants that he was. Defendants are not mental health professionals and are not permitted to view the unit health records of inmates, which includes their mental health files. Plaintiff did not suffer any injuries as a result of the fire. He was taken to the prison infirmary, then UC Davis medical center, as a precation.

Plaintiff feigns suicide every couple of weeks in an effort to manipulate staff. Nonetheless, every time Plaintiff claims to be suicidal, without exception, he is immediately provided emergency mental health treatment. Mental health treatment on August 14, 2002, was readily available. The Defendants had no reason not to provide Plaintiff with emergency mental health treatment, had he requested such treatment – even if such request was a form of manipulation.

ADMISSIONS AND STIPULATION

Defendants will stipuate to the introduction of the following:

(1) Plaintiff's Exhibits 7 and 8 that were filed with the Court on August 25, 2008, which include inmate grievances filed by Plaintiff, dated September 2, 2002, and August 25, 2003, respectively.

(2) An Involuntary Medication Hearing dated October 6, 2004, as part of Plaintiff's Exhibit 5, filed with the Court on August 25, 2008, but not the remainder of Exhibit 5, including an Involuntary Medication Hearing dated April 2, 2008.

(3) The Rule Violation Report and Crime/Incident Report dated August 14, 2002, concerning a cell fire set by Plaintiff.

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POINTS OF LAW

I. LEGAL STANDARD

Under the Eighth Amendment, prisoners are protected from cruel and unusual punishment at the hands of prison officials, including the denial of mental health treatment. *Conn v. City of Reno*, 572 F.3d 1047, 1054-55 (9th Cir. 2009.) To establish an Eighth Amendment violation, Lamon must show by a perponderance of the evidence that the Defendants acted or failed to act in response to a medical need, causing him harm. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). He must establish that his medical needs were objectively serious, and that the defendants were deliberately indifferent to the potential harm. *Wilson v. Seiter*, 501 U.S. 294, 298-99 (1991); *Wood v. Housewright*, 900 F.2d 1332, 1337 (9th Cir. 1990). "Deliberate indifference is a high legal standard." *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004). Inadequate treatment due to gross negligence will not suffice and does not amount to a constitutional violation. *Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990). To meet this burden, Lamon must establish that defendants "[knew] of and disregard[ed] an excessive risk to [his] health." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Lamon also must establish that the Defendants' actions were the cause of his injury. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006)

II. PLAINTIFF MAY NOT RECOVER FOR MENTAL OR EMOTIONAL INJURY ABSENT A PHYSICAL INJURY

The Prison Litigation Reform Act provides that "[n]o Federal civil action may be brought by a prisoner while in custody without a prior showing of physical injury." 42 U.S.C. § 1997e(e). The physical injury "need not be significant but must be more than de minimis." *Oliver v. Keller*, 289 F.3d 623, 627 (9th Cir. 2002) (allegations of severe and lasting back and leg pain, a painful canker sore, and unspecified injuries sustained in a fight not more than de minimis).

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III. Plaintiff Has Burden of Proving That He Is Entitled to Punitive Damages

The plaintiff has the burden of proving what, if any, punitive damages should be awarded by a preponderance of the evidence. Model Jury Instructions for the Ninth Circuit, § 5.5 (2007). The jury must find that the Defendant's conduct was "motivated by evil motive or intent, or . . . involves reckless or callous indifference to the federally protected rights of others." *Smith v. Wade*, 461 U.S. 30, 56 (1986).

Dated: March 9, 2010

Respectfully submitted,

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Supervising Deputy Attorney General

/s/ Marta C. Barlow

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Lamon v. Pliler, et al.**
No.: **2:03-CV-0423 WBS CMK P**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On March 9, 2010, I served the attached **DEFENDANTS' TRIAL BRIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Barry Lamon, E-08345
California State Prison, Sacramento
P.O. Box 290066
Represa, CA 95671-0066
In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 9, 2010, at Sacramento, California.

S. Burke	*/s/ S. Burke*
Declarant	Signature

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